

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.208 OF 1988

The Commissioner of Income-tax,
Bombay City-VIIII, Bombay.

...Applicant

V/s.

M/s.Prabhudas Dalichand & Co.

...Respondent

Mr.Parag Vyas i/b. K.C. Sidhwa for Applicant.
Ms.Asifa Khan for Respondent.

**CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.**

DATED : AUGUST 12, 2005.

P.C. :-

. The reference registered as Reference No.208/88 has arisen out of the order of the Tribunal in ITA No.625/Bom/82 for Assessment Year 1977-78. It is, thus, clear that for past 18 years this reference is pending before this Court for adjudication.

2. This matter was on the board of the Division Bench (Coram : Dr.B.P. Saraf & Smt.R.P. Desai, JJ.) on 19th July, 1999 when four weeks' time was granted to the applicant-revenue to obtain earlier orders relied upon by them and which were referred in this case. In that order, it was also made clear that if the learned

Counsel for the Revenue failed to make available the requisite information on that day, the reference would be referred unanswered on that day. Thereafter, again this matter had come up before us from time to time on 25th June, 2005, 6th July, 2005 and 20th July, 2005 by which one week's time was granted to the applicant. Lastly, the matter was kept for hearing on 2nd August, 2005 which was adjourned by consent to today.

3. Today, when the matter was called out for hearing of the Reference made under Section 256(1) of the I.T. Act, learned Counsel for the revenue prayed for adjournment.

4. We are not inclined to entertain prayer for grant of adjournment in this case because of the peculiar facts of this case, enumerated hereinafter.

5. Till today no material is placed before us. Even today, learned Counsel for the Applicant is not in a position to make a statement.

6. In the above circumstances, considering the inaction, reluctance, negligent attitude and tendency on the part of the applicant-revenue not to comply with the orders of the Court, we have no option but refuse to grant adjournment, especially considering the non-cooperation and defiant attitude adopted by the Income-tax department.

7. In spite of grant of four adjournments, the department could not take steps to produce the material on record. At least, no material is produced before us to show any steps having been taken by the department.

8. Mr. Kotangle, learned Counsel for respondent-revenue on being asked expressed his inability to give any single reason for not producing the document. The officers from the Law and Judiciary posted at Mumbai and the Commissioner of Income-Tax (J) were also noticed, to impress upon them the resultant revenue loss due to their negligence. But they did nothing except blaming each other and their higher ups. It is really surprising that the Revenue itself is not

interested in protecting interest of the Revenue. In this view of the matter, we have no option but to return the reference unanswered.

9. Incidentally, we may mention that the question referred for our opinion, has minimal tax impact. In view of our judgment dated 1st July, 2005, passed in Income Tax Reference No.397 of 1988 (**C.I.T. Vs. M/s.Pithwa Engg.Works**), (2005) 276 ITR 519 for the reasons recorded therein, wherein we have relied upon decision of this Court in the case of **C.I.T. vs. Camco Colour Co.** (2002) 254 ITR 565, we feel that no prejudice would be caused to the Revenue, if the question referred is returned unanswered.

10. In the above view of the matter, question referred to this Court for the Assessment Year 1977-78 is returned unanswered.

. Reference, accordingly, stands disposed of with no order as to costs.

(A.S. AGUIAR, J.)

(V.C. DAGA, J.)